

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

- vs -

THOMAS R. KELLEY,

Defendant.

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CR. 10-40100

ORDER RE: MOTION
TO QUASH

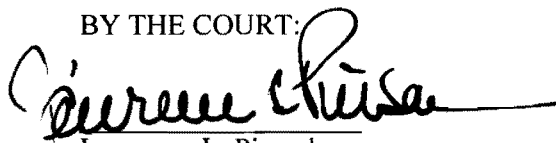
A hearing was held before the Court on March 30, 2011, concerning Attorney Clint Sargent's motion to quash the subpoena which was served upon him commanding his appearance and testimony in the trial in the above action. Attorney Sargent is acting as standby counsel in this matter. The Court has considered the authorities presented and the argument made by counsel. The Court has determined that the testimony sought by the United States does not involve a communication which would violate the attorney-client privilege. *See In re Grand Jury Proceedings, Des Moines, Iowa*, 568 F.2d 55, 558 (8th Cir. 1977). The Court recognizes however that because of the appearance to the jury of counsel testifying as a witness for the United States, either Mr. Sargent or Defendant Thomas R. Kelley may desire the appointment of replacement standby counsel. Accordingly,

IT IS ORDERED:

1. That the motion to quash subpoena (Doc.26) is denied;
2. That if the United States calls Mr. Sargent as a witness, questioning of Mr. Sargent will be limited to those matters which clearly do not implicate the attorney-client privilege; and
3. That if either Mr. Sargent or Defendant Thomas R. Kelley desires replacement standby counsel to be appointed in this matter and the Court is advised of this desire by 3:00 P.M. on March 31, 2011, the Court will appoint replacement standby counsel.

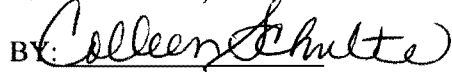
Dated this 30th day of March, 2011.

BY THE COURT:


Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: 
Deputy